

## **Remarks**

Claims 9 and 11-17 are presented for the Examiner's review and consideration. Applicant believes the claim amendments and the accompanying remarks, herein, serve to clarify the present invention and are independent of patentability. No new matter has been added.

### Election/Restrictions

Restriction under 35 U.S.C. §121 was required. During a telephone conversation on June 6, 2007, Applicant made a provisional election with traverse to prosecute the invention in Claims 9-17. Applicant affirms this election without traverse and cancels claims 1-8.

### 35 U.S.C. §102(e) Rejections

Claims 9, 10, 12, 14, 16, and 17 were rejected under 35 U.S.C. §102(e) as being anticipated by Shapeland et al (6,425,856) ("Shapeland"). For reasons set forth below, Applicant respectfully submits that this rejection should be withdrawn.

Claim 9, as amended, discloses an apparatus for the treatment of congestive heart failure having an anchor disposed proximate the heart's apex, a plurality of petals, and a tensioning band secured to at least one of the petals. The rejection states that Shapeland describes a similar apparatus that has ribs that may be fastened to a ring 57. Applicant respectfully submits that cited element 57, shown in Fig. 12, is not the equivalent of Applicant's Claim 9 tensioning band.

In fact, the specification of Shapeland teaches away from a tensioning band when it states that "[p]referably the ring 57 fits loosely around the AV groove and does not apply undue pressure." (Col. 17, lns. 2-3). While Shapeland's ring 57 is not intended to apply pressure, the Applicant's tensioning band's actual function is to apply pressure to decrease the internal volume of a part of the heart with an apex. Therefore, Shapeland's ring 57 is in direct contrast with Applicant's

tensioning band. Further, the ring 57 in the Shapeland reference is intended to be placed between the upper and lower portions of the heart in what is commonly referred to as the A-V groove. (Col. 16, lns. 66-67 and Col. 17, lns. 1-3). Applicant's tensioning band, however, is not limited to the A-V groove, but can be placed in other positions around the surface of the heart. Accordingly, this element of the claimed invention is not met by the disclosure of Shapeland.

Applicant respectfully submits that independent claim 9, as amended, is patentable over Shapeland. As claims 12, 14, 16, and 17 depend from claim 9, these dependent claims necessarily include all the elements of their base claim. Accordingly, Applicant respectfully submits that the dependent claims are allowable over Shapeland for the same reasons.

#### 35 U.S.C. §101 Rejection

Claim 14 was also rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant has amended this claim as suggested by the Examiner. Accordingly, Applicant respectfully submits that dependent claim 14 is now allowable.

#### Allowable Subject Matter

Claims 11, 13, and 15 were objected to as being dependent upon a rejected base claim, but would have been allowable if rewritten in independent form. Applicant has amended claims 11, 13, and 15 as required by the Examiner. Accordingly, Applicant respectfully submits that independent claims 11, 13, and 15 are allowable.

#### Conclusion

In the light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

Fees for a one month extension of time and for an extra independent are believed to be due for this submission and are being paid via credit card. However, please charge any other required

Applicant(s): S. Jayaraman  
Application No.: 10/770,266  
Examiner: S. Gilbert

fee (or credit overpayments) to the Deposit Account of the undersigned, Account No. 500601  
(Docket No. 795-A03-014-1).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul D. Bianco", with a stylized flourish at the end.

Paul D. Bianco, Reg. # 43,500

Customer Number: 33771  
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO, P.L.  
21355 East Dixie Highway, Suite 115  
Miami, Florida 33180  
Tel: 305-830-2600; Fax: 305-830-2605